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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/276,056	03/25/1999	DARRYL P. BLACK	10360/014001	1593

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EXAMINER

FLEURANTIN, JEAN B

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/276,056

Applicant(s)

BLACK ET AL.

Examiner

Jean B Fleurantin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 20.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. Claims 1-23 remain pending for examination.

***Information Disclosure Statement***

2. The information disclosure statement filed on June 05, 2003 complies with the provisions of MPEP 609. They have been placed in the application file, and the information referred to therein has been considered as to the merits.

***Response to Applicant's Remarks***

3. Applicant's arguments filed on August 07, 2003 with respect to claims 1-23 have been fully considered but they are not persuasive. Because of the following:

In response to applicant's argument on pages 2 and 3, a prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. Once such a case is established, it is incumbent upon appellant to go forward with objective evidence of unobviousness. In re Fielder, 471 F.2d 640, 176 USPQ 300 (CCPA 1973).

In response to applicant's argument on page 2, that "neither reference individually teaches nor suggests the second flow aggregation process recited in the claim." It is respectfully submitted that Iddon and Bruins references disclose the claimed limitations as follow: Iddon teaches "a method of transmitting accounting records in an accounting system that produces information pertaining network traffic flow" as receives and transmits packets in similar fashion

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to the network nodes, (see col. 9, lines 3-4), comprising “collecting data from a network device by a data collector associated with the network device and producing accounting records from the data” as a sufficient number of network nodes connected throughout a computer network adapted to collect network data, (see col. 3, lines 64-66);

“storing in the data collector the accounting records” as network nodes connected throughout a computer network adapted to collect network data, (see col. 3, lines 64-66); further, in column 6, lines 16-19, Iddon teaches update routines are stored in the data collection module, and storing routines in the data collection module the network data engine remains independent of these routines. Iddon does not explicitly indicate transmitting the accounting records to the flow aggregation process; and the flow aggregation process that the flow aggregation process received the accounting records before discarding the accounting records sent to the flow aggregation process. However, Bruins indicates based on the aggregated message flow information, accounting information pertaining to network usage for use in charging users of the network for their use, (see col. 7, lines 44-47); further, in columns 1 and 5, lines 21-35 and 12-15, Bruins teaches information could also be aggregated by a variety of categories for the entire network thereof, for groups of sources or destinations, or for particular types of packets such as accounting information; and the display 260 application can record accounting information which can be used to charge users of the network 100 for their use. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combined teachings of Iddon and Bruins with transmitting the accounting records to the flow aggregation process; and the flow aggregation process that the flow aggregation process received the accounting records before discarding the accounting records sent to the flow aggregation

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process. Such modification would allow the teachings of Iddon and Bruins to improve the accuracy and the reliability of the fault tolerance for network accounting architecture, and to provide a method and system for monitoring information about network usage, (see col. 2, lines 6-7), thereby providing a method and system for exporting and using data relating to flows in a flow switching network and responsive to message flow patterns, (see col. 2, lines 17-19).

In response to applicant's argument on pages 2 and 3, that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument on page 3, that "the claim element is not taught or suggested by the combination". It is respectfully submitted that Bruins reference teaches each of the aggregators 240 collects a set of flow data packets 220 which relate to the criteria selected by its associated filter 230 and records aggregated information relating to those flow data packets 220 at a storage element 250, (see Bruins col. 4, lines 52-60).

***Claim Rejections - 35 U.S.C. § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,634,009 issued to Iddon et al. (hereinafter "Iddon") in view of U.S. Patent No. 6,308,148 issued to Bruins et al. (hereinafter "Bruins").

As per claims 1, 2 and 18, Iddon teaches "a method of transmitting accounting records in an accounting system that produces information pertaining network traffic flow" as receives and transmits packets in similar fashion to the network nodes, (see col. 9, lines 3-4), comprising "collecting data from a network device by a data collector associated with the network device and producing accounting records from the data" as a sufficient number of network nodes connected throughout a computer network adapted to collect network data, (see col. 3, lines 64-66);

"storing in the data collector the accounting records" as network nodes connected throughout a computer network adapted to collect network data, (see col. 3, lines 64-66); further, in column 6, lines 16-19, Iddon teaches update routines are stored in the data collection module, and storing routines in the data collection module the network data engine remains independent

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of these routines. Iddon does not explicitly indicate transmitting the accounting records to the flow aggregation process; and the flow aggregation process that the flow aggregation process received the accounting records before discarding the accounting records sent to the flow aggregation process. However, Bruins indicates based on the aggregated message flow information, accounting information pertaining to network usage for use in charging users of the network for their use, (see col. 7, lines 44-47); further, in columns 1 and 5, lines 21-35 and 12-15, Bruins teaches information could also be aggregated by a variety of categories for the entire network thereof, for groups of sources or destinations, or for particular types of packets such as accounting information; and the display 260 application can record accounting information which can be used to charge users of the network 100 for their use. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combined teachings of Iddon and Bruins with transmitting the accounting records to the flow aggregation process; and the flow aggregation process that the flow aggregation process received the accounting records before discarding the accounting records sent to the flow aggregation process. Such modification would allow the teachings of Iddon and Bruins to improve the accuracy and the reliability of the fault tolerance for network accounting architecture, and to provide a method and system for monitoring information about network usage, (see col. 2, lines 6-7), thereby providing a method and system for exporting and using data relating to flows in a flow switching network and responsive to message flow patterns, (see col. 2, lines 17-19).

As per claims 3-4, 9, 11-13 and 19, Iddon teaches the claimed subject matter except the claimed determining an error relating to the first flow aggregation process, and causing aggregate

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reports from the second flow aggregation process to be sent to the accounting module in place of the aggregate reports from the first flow aggregation process. However, Bruins teaches state information about the network 100 can be used to determine whether particular communication links 110 are congested, are heavily used, are lightly used or even inoperative, network administrators can use this information to determine which communication links 110 require maintenance; and based on the aggregated message flow information, accounting information pertaining to network usage for use in charging users of the network for their use, (see cols. 5 and 7, lines 52-58 and 44-47); further, in column 5, lines 12-15, Bruins teaches the display 260 application can record accounting information which can be used to charge users of the network 100 for their use. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combined teachings of Iddon and Bruins with determining an error relating to the first flow aggregation process, and causing aggregate reports from the second flow aggregation process to be sent to the accounting module in place of the aggregate reports from the first flow aggregation process. Such modification would allow the teachings of Iddon and Bruins to improve the accuracy and the reliability of the fault tolerance for network accounting architecture, and to provide a method and system for monitoring information about network usage, (see col. 2, lines 6-7), thereby providing a method and system for exporting and using data relating to flows in a flow switching network and responsive to message flow patterns, (see col. 2, lines 17-19).

As per claims 5, 14 and 20, Iddon teaches a method “wherein the data collector produces network accounting records (NARs) from collector data” as a sufficient number of network



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nodes connected throughout a computer network adapter to collect network data, (see col. 3, lines 64-66).

As per claims 6, 15 and 21, Iddon teaches a method further comprises “removing from a local store of the data collector the locally stored copies of the transferred NARs” as probe 13 analyzes each packet, i.e., the digital form residing in memory 15 to determine whether the packet is intended for itself, for example another node may request certain information from probe 13, if a packet is targeted to probe 13, probe 13 will respond accordingly, i.e., like a normal node, if the packet is not intended for probe 13, i.e., the target address is not that of probe 13, probe 13 analyzes the packet in order to update certain tables within memory 15, for example RMON MIB, a MIB for SNMP, outlines what data should be accessible and how, as such if the probe 13 is used in an SNMP RMON MIB environment, RMON MIB will determine a minimum set of tables, which probe 13 must keep and manage, (see col. 5, lines 28-56).

As per claims 7, 16 and 22, Iddon teaches a method “wherein store and forward capabilities of the flow data collector provide fault tolerance at this accounting process level to ensure reliable data transfer” as network management typically entails determining which sections of a computer network are over or under-utilized, in addition it includes detecting and locating network faults so that repairs and/or re-routing of the network can be made, (see col. 1, lines 24-28).

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As per claims 8, 17 and 23, the limitations of claims 8, 17 and 23 are rejected in the analysis of claims 1 and 5, and these claims are rejected on that basis.

As per claim 10 the limitations of claim 10 are rejected in the analysis of claim 1, and this claim is rejected on that basis.

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5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

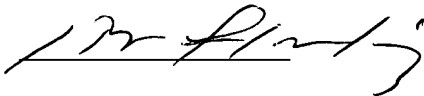
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***Contact Information***

6. Any inquiry concerning this communication from examiner should be directed to Jean Bolte Fleurantin at (703) 308-6718. The examiner can normally be reached on Monday through Friday from 7:30 A.M. to 6:00 P.M.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Mrs. KIM VU can be reached at (703) 305-8449. The FAX phone numbers for the Group 2100 Customer Service Center are: *After Final* (703) 746-7238, *Official* (703) 746-7239, and *Non-Official* (703) 746-7240. NOTE: Documents transmitted by facsimile will be entered as official documents on the file wrapper unless clearly marked "**DRAFT**".


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2100 Customer Service Center receptionist whose telephone numbers are (703) 306-5631, (703) 306-5632, (703) 306-5633.



Jean Bolte Fleurantin

October 14, 2003

JBFB/



SHAHID ALAM  
PRIMARY EXAMINER